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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3816 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

PURSHOTTAMBHAI CHANDUBHAI GAJERA

Versus

STATE OF GUJARAT

Appearance:

MR RM CHHAYA for Petitioners
MR SJ DAVE AGP for Respondent No. 1
MR AK CLERK for Respondent No. 2
NOTICE SERVED for Respondent No. 3, 4, 5, 6, 7

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 24/06/1999

ORAL JUDGEMENT

1. Rule. Mr. S.J. Dave, learned A.G.P. waives service of rule on behalf of respondent no.1, Mr. A.K. Clerk waives service on behalf of respondent no.2 and respondent nos. 3 to 7 need not be served as they are co-owners with the petitioners and are supporting the

petitioners.

2. Heard the learned counsel for the respective parties. On a joint request of the parties, this petition is taken up for final hearing today.

3. Short controversy in the present petition is as to whether the respondent-Corporation can demand vacant possession and removal of super structures of the land in question by issuing a notice under section 68 read with rule 33 of the Gujarat Town Planning & Urban Development Act, 1976.

4. It is a common ground that the relevant town planning scheme has been sanctioned by the government, that the petitioners have been allotted the final plot no. 14 under the scheme, and that the area of 95.94 meters from the said final plot has been reserved for roadline. It is pertinent to note and to emphasize at this stage that this is mere reservation for the future widening of the road as contemplated in the scheme. The affidavit on behalf of the respondent-Corporation as also on behalf of the State both specifically indicate that the specified area of 95.64 meters falls within the roadline, and that the petitioners would lose that specified area as and when the road is widened. It may be that the said scheme has been taken up for implementation by the Corporation today. It may be that the road is to be widened in the near future. The crux of the matter is whether the respondent-Corporation can demand possession of the specified area merely for the purpose of implementation of the scheme, without resorting to acquisition of the land i.e. without acquiring title to the land and without resorting to the Land Acquisition Act, Bombay Municipal Corporations Act and/or any other relevant law. On a plain reading of section 68 (which has been resorted to by the respondent-Corporation in the impugned notice) indicates that it is only an empowering provision wherein the respondent-Corporation can demand possession of the specified property from a person who is in unauthorized occupation of such land or property. It is an admitted position that on the date of issuance of notice and even today, the petitioners are legal owners of the property in question including the strip of land admeasuring 95.64 meters which is kept under reservation. The petitioners have not lost their title thereto even today nor has the respondent-Corporation acquired title thereto. Thus, section 68 has no scope or application to the admitted facts of the case. Obviously therefore, the impugned notice is without jurisdiction and is therefore quashed

and set aside.

5. It may be clarified that for the purpose of implementation of the scheme, the respondent-Corporation and/or the agency entrusted with the implementation of the scheme under the law may widen the existing road as per the provisions in the sanctioned scheme only after acquiring title to the said reserved strip of land, by acquiring the same under the Land Acquisition Act or under the B.P.M.C. Act or under any other applicable statute.

6. This petition is accordingly allowed. Rule is made absolute with no order as to costs.

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